

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1143V

Filed: July 6, 2016

Unpublished

ASHOK PATEL,

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Petitioner,

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v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

* Attorneys' Fees and Costs;

* Special Processing Unit ("SPU")

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Respondent.

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Maximillian Muller, Muller Brazil, LLP, Dresher, PA, for petitioner.

Julia McInerny, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

Dorsey, Chief Special Master:

On October 7, 2015, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act"). Petitioner alleged that he suffered left shoulder injuries as a result of an influenza ("flu") vaccination he received on October 2, 2014. On May 12, 2016, the undersigned issued a decision awarding compensation to petitioner based on the parties' joint stipulation. (ECF No. 15).

On June 10, 2016, petitioner filed a motion for attorneys' fees and costs. (ECF No. 19). Petitioner requests attorneys' fees in the amount of \$15,656.00, attorneys' costs in the amount of \$1,350.29, for a total amount of \$17,006.29. *Id.* at 2. In

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

accordance with General Order #9, petitioner's counsel represents that petitioner incurred no out-of-pocket expenses.

On June 22, 2016, respondent filed a response to petitioner's motion. (ECF No. 21). Respondent argues that “[n]either the Vaccine Act nor Vaccine Rule 13 contemplates any role for respondent in the resolution of a request by a petitioner for an award of attorneys' fees and costs.” *Id.* at 1. Respondent adds, however, that she “is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case.” *Id.* at 2. Additionally, “[b]ased on a survey of fee awards in similar cases and her experience litigating Vaccine Act claims, respondent asserts that a reasonable amount for fees and costs in the present case would fall between \$11,000.00 and \$14,000.00.” *Id.* at 3.

On July 5, 2016, petitioner filed a reply. (ECF No. 22). Petitioner argues that respondent has provided “no precise objection” and “references a self-serving ‘estimation’ of what [she] believes the range for fees and costs in this type of case should be.” *Id.* at 1-2. Petitioner recounts that this case “involved the review of approximately 450 pages of medical records, a detailed petition, ongoing and continuous client contact with both the client and his family, a detailed settlement demand and negotiations related thereto.” *Id.* at 2. Petitioner includes a list of the fees and costs awarded petitioner's counsel in two dozen SIRVA cases in 2015.

The undersigned has reviewed the billing records submitted with petitioner's request. In the undersigned's experience, the request appears reasonable, and the undersigned finds no cause to reduce the requested hours or rates.

Petitioner requests additional attorneys' fees in the amount of \$275.00 (one hour of time) for preparing the reply. *Id.* at 6. The undersigned finds the additional time spent preparing the reply to be reasonable and awards the full amount requested for preparation of the reply brief, \$275.00. Thus, the total amount awarded for attorneys' fees and costs is \$17,281.29.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). Based on the reasonableness of petitioner's request, the undersigned **GRANTS** petitioner's motion for attorneys' fees and costs.

Accordingly, the undersigned awards the total of \$17,281.29³ as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel Maximillian J. Muller.

³ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, “advanced costs” as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See generally *Beck v. Sec'y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir.1991).

The clerk of the court shall enter judgment in accordance herewith.⁴

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey

Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.